

In re ) Fair Hearing No. 15,206  
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Appeal of )

The petitioner appeals a decision by the Department of Social Welfare finding that he is over-income for the Medicaid program unless and until he incurs \$840.30 in medical expenses (his "spend down" amount).

1. The petitioner is a disabled man who is attempting through the Social Security "Pass" program to establish his own business selling maple syrup products. He currently receives Social Security income of \$735.80 per month, and his wife and son receive \$184 each from Social Security as his dependents. His wife also works earning \$560.68 per month.

2. The petitioner was notified last Fall that he would no longer be eligible for Medicaid benefits because he had excess income when all the family sources--the Social Security income, his wife's earnings and the family's self-employment income--were added together. The Department attributed \$328 per month in self-employment income to the family based on information in the petitioner's 1996 income tax return.

3. The petitioner filed an appeal of that

determination because he believed that the figures used in last year's tax return regarding his earnings from self-employment were not an accurate reflection of his current situation. He was advised that he could provide new figures on his current earnings if he wished to have a different calculation made.

4. Over the next few months the petitioner provided statements of cash receipts and expenses to the Department from January through October of 1997 and a new calculation was made with regard to his monthly income by the Department. The Department ultimately concluded that during the period at issue the petitioner had a net monthly income of \$88.83 after agreeing to count all of the expenses presented by the petitioner, including the cost of labor to replace some tubing which the petitioner had paid in kind by turning over an asset of his business to his creditor. The parties still disagreed over whether a \$2,000 business loan should have been included in his receipts as income and whether depreciation should be deducted from income as an expense, although the petitioner never presented any depreciation figures to the Department. However, because the petitioner was allowed a \$90 monthly disregard from his self-employment income, the Department determined his monthly countable self-employment income to be \$0.00, obviating any need to decide whether further deductions might be appropriate.

5. The Department then recalculated the petitioner's countable family income using only the Social Security income and the figures from the petitioner's wife's self-employment income (a total of \$1574.48 after the wife was also given a \$90 disregard from her earned income) to see whether the figure exceeded the Medicaid maximum (the Protected Income Level) of \$825 for a family of three.

6. The Department's calculations of the petitioner's eligibility was made using both SSI/AABD and ANFC-related rules. The calculation using the ANFC-related rules was found to be more advantageous and is as follows:

The Department calculated [petitioner's] spenddown by adding one-third of his \$735.80 Social Security, which is \$242.81 to one-third of his wife's \$184.00 Social Security, which is \$60.72 to one-third of his wife's \$470.68 earnings, which is \$155.32; and one-third of his \$0.00 self-employment income, which is \$0.00 for total countable income of \$458.85.

Next the Department divided the PIL for three of \$825.00 by three. Their result was a figure of a \$275.00 PIL for [petitioner]. Next the \$275.00 PIL was subtracted from income of \$458.85 to determine available income of \$183.85 to meet medical need. The Department calculates spenddowns for six-month periods so \$183.85 was multiplied times six for a spenddown of \$1,103.10.

[Petitioner] indicated that he is now paying his monthly Medicare premium of \$43.80. The Department multiplied the \$43.80 figure times six months for a total deduction of \$262.80. This is subtracted from \$1,103.10, leaving a balance of \$840.30. Although [the worker] previously advised [petitioner] of the possibility of additional deductions if he has over-the-counter medication costs, the Department has not received information regarding the existence of any of these expenses.

ORDER

The decision of the Department is affirmed.

REASONS

The petitioner appealed this matter because he felt he should be eligible for Medicaid and pointed to the Department's using his self-employment income as an error which was committed in determining his eligibility. After his appeal, the Department determined that none of his income from self-employment was countable. In essence, the petitioner got what he wanted but the combination of Social Security checks and his wife's employment has still rendered the petitioner ineligible for benefits. However, his "spend-down" amount, the amount of medical costs which he must incur and take responsibility for before Medicaid can be reinstated, has been reduced considerably. Under the Medicaid regulations the petitioner cannot be eligible for Medicaid until he meets those spend-downs. See M240, M402.

The petitioner does not argue that any of the Department's further calculations are incorrect. The Department had an option for computing the petitioner's eligibility either under the rules at M243.1 which govern persons who are disabled, or M350 governing persons who have dependent children. Neither method rendered eligibility for the petitioner because the threshold levels for Medicaid eligibility are relatively low. (\$825 per month for a

family of three, P-2420 B.) However, the Department's use of the ANFC-related methodology resulted in a much lower spend-down for the petitioner than if all his family's income and eligibility were counted together. P 2420 E. The petitioner can meet his spend-down by showing receipts for medical expenses he incurs during the next six months and when they have reached \$840.30, his Medicaid eligibility will kick in again. As the Department's calculations and decisions are supported by the regulations, they must be affirmed by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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